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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

FERNANDO RODRIGUEZ, and

GUADALUPE ZAMORA,

individuals,

Case No.: 3:19-cv-01087

Plaintiff,

COMPLAINT

v.

SPIKE BUILDERS, INC., an Oregon

domestic business corporation,

Fair Labor Standards Act
(29 U.S.C. §§ 201 *et seq.*),
Oregon Wage and Hour Laws,

Defendants.

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Fernando Rodriguez and Guadalupe Zamora (collectively “Plaintiffs”) bring their action against Spike Builders Inc., an Oregon domestic business corporation (“Defendant”) under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, (“FLSA”) to collect unpaid overtime wages. Plaintiffs seek overtime due to them under 29 U.S.C. § 207, liquidated damages, and attorney’s fees under 29 U.S.C. § 216(b).

2. Plaintiffs also seek unpaid overtime, penalty wages, and attorney’s fees for violations of Oregon wage and hour laws under O.R.S. §§ 652.140, 652.150, 653.055, 653.055, 652.200.

II. JURISDICTION

3. This Court has jurisdiction of this action under 28 U.S.C. § 1337, as the action arises under the laws of the United States; 28 U.S.C. §1331, as the action arises under an Act of Congress regulating commerce; 29 U.S.C. § 216(b), as the action arises under FLSA; and 28 U.S.C. § 1367, as the state claims are so related to the federal claims as to form a part of the same case or controversy under Article III of the United States Constitution.

III. PARTIES

4. Fernando Rodriguez (“Rodriguez”) is a natural person who resides in Lane County, Oregon.

5. Guadalupe Zamora (“Zamora”) is a natural person who resides in Washington County, Oregon.

6. At all relevant times to their action, Defendant Spike Builders Inc. (“Spike”) was an Oregon domestic business corporation operating as a general construction business with its principal place of business in Gresham in Multnomah County, Oregon.

IV. FACTS

7. Spike hired Plaintiffs to perform wood framing for \$20.00 per hour on or around May 2016.

8. Plaintiff Rodriguez had a break in his employment. He stopped working for Spike sometime on or around January 2017 but was hired back on or around July 2017 at the same \$20.00 per hour rate.

9. On or around January 2018, Plaintiffs received a raise to \$21.00 per hour.

10. Spike terminated Plaintiff Rodriguez's employment in May 2018. Plaintiff Zamora's employment was terminated by one of the general contractors on or around August 2018.

11. Plaintiffs handled and worked on materials moved in and produced for interstate commerce.

12. Plaintiffs were employed by an enterprise engaged in interstate commerce.

13. Among other weeks, Plaintiffs worked more than 40 hours during the week of July 9 and 18 of 2017, and August 7 and 14 of 2017, and were not paid at a rate of one-and-one-half times their hourly rate for those workweeks.

14. Defendant Spike told Plaintiffs that it did not pay overtime to its employees when Plaintiffs complained.

15. Defendant Spike did not pay Plaintiffs wages due to them upon termination of their employment.

16. The nonpayment of overtime wages upon Plaintiff's employment termination by Defendant Spike was willful.

17. Plaintiff Rodriguez, through counsel, sent Defendant Spike a letter on December 7, 2018, via certified mail, complaining of violations of state and federal wage and hour law, and

requesting payment of the wages Plaintiff is due.

18. Plaintiff Zamora, through counsel, sent Defendant Spike, through its counsel, a letter on June 10, 2019, via email, complaining of violations of state and federal wage and hour laws, and requesting payment of wages Plaintiff is due.

19. To date, Defendant has not paid Plaintiffs' overtime wages owed to them.

V. CLAIMS FOR RELIEF

First Claim – Violation of FLSA Overtime

20. Defendant violated 29 U.S.C. § 207, by not paying Plaintiffs overtime premiums for work performed in excess of forty hours per workweek.

21. Defendant's failure to pay overtime was willful.

22. Under 29 U.S.C. § 216(b), Plaintiffs are entitled to recover unpaid overtime and an equal amount as liquidated damages and attorney's fees and costs.

Second Claim – Violation of Oregon Overtime Law

23. Defendant violated O.R.S. § 653.261, and its implementing regulations, when they failed to pay Plaintiffs overtime wages at a rate of one-and-one-half times their regular rate of pay for all hours worked in excess of forty hours per workweek.

24. Under O.R.S. § 653.055, Plaintiffs are entitled to recover their unpaid overtime wages, penalty damages in an amount equal to 240 times their hourly rate, and reasonable attorney's fees and costs for nonpayment of overtime wages.

Third Claim – Violation of Oregon Timely Payment of Wages Law

25. Defendant failed to pay Plaintiffs all their wages upon termination of their employment within the time specified in O.R.S. § 652.140.

26. Defendant's failure to pay Plaintiffs all their wages upon termination of employment was willful.

27. Under O.R.S. § 652.150, Plaintiffs are entitled to recover penalty wages in an amount equal to 240 times their hourly rate, plus reasonable attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

1. Award Plaintiffs their unpaid federal overtime premiums under 29 U.S.C § 207, and an equal amount in liquidated damages under 29 U.S.C. § 216(b);
2. Award Plaintiffs their unpaid Oregon overtime premiums under O.R.S. § 653.261 and civil penalties in the amount of 240 times Plaintiffs' hourly wage under O.R.S. § 653.055;
3. Award Plaintiffs civil penalties in the amount of 240 times Plaintiffs' hourly wage under O.R.S. §§ 652.140 and 652.150, for failure to pay Plaintiffs' wages promptly upon termination;
4. Find that Plaintiffs are the prevailing party and award reasonable attorney fees and costs under 29 U.S.C. § 216(b) and O.R.S. §§ 652.200(2) and 653.055(4);
5. Award Plaintiffs pre-judgment interest on sums due under the state law claims and post-judgment interest on all claims; and
6. Award Plaintiffs such other relief as their Court deems just and proper.

Respectfully submitted on the 15th day of July, 2019.

By: s/ Mayra A. Ledesma
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Attorney for Plaintiffs